ANN BAVENDER*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
ANDREW S. KERSTING
EUGENE M. LAWSON, JR.
SUSAN A. MARSHALL*
HARRY C. MARTIN
RAYMOND J. QUIANZON
LEONARD R. RAISH
JAMES P. RILEY
ALISON J. SHAPIRO
KATHLEEN VICTORY
JENNIFER DINE WAGNER*
HOWARD M. WEISS
ZHAO XIAOHUA*

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS

CONSULTANT FOR INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*
MITCHELL LAZARUS
EDWARD S. O'NEILL*

WRITER'S DIRECT

812-0474
kersting@fhh-telcomlaw.com

DOCKET FILE COPY ORIGINAL

December 21, 2000

RECEIVED

DEC 21 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY
Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, DC 20554

Re: Amendment of Section 73.622(b),
Table of Allotments, Digital
Television Broadcast Stations
MM Docket No. 00-138; RM-9896

Dear Ms. Salas:

Transmitted herewith are an original and four copies of a "Joint Response to Supplemental Reply Comments," filed in the above-referenced allotment rulemaking proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.

Andrew S. Kersting
Counsel for Guenter Marksteiner

Enclosure
cc (w/ encl.): Certificate of Service (by hand & first-class mail)

No. of Copies rec'd 0+4
List ABCDE

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

DEC 21 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.622(b),	)	MM Docket No. 00-138
Table of Allotments,	)	RM-9896
Digital Televison Broadcast Stations	)	
(Boca Raton, Florida)	)	

To: Chief, Video Services Division

JOINT RESPONSE TO SUPPLEMENTAL REPLY COMMENTS

Guenter Marksteiner ("Marksteiner") and the School Board of Broward County ("Broward County"),[1] by their respective counsel, hereby submit this joint response to the "Supplemental Reply Comments," filed November 23, 2000 ("Supplemental Reply"), by Sherjan Broadcasting Co., Inc. ("Sherjan"), in the above-captioned proceeding.[2] In support of this joint response, the following is stated:

I. Background.

On August 18, 2000, the Commission issued a *Notice of Proposed Rule Making*, 15 FCC Rcd 14836 (Video Serv. Div. 2000) ("*NPRM*"), proposing to substitute DTV Channel *40 for DTV

---

[1] Broward County is the successor-in-interest to Channel 63 of Palm Beach, Inc. ("PBI"), and now is the licensee of Station WPPB-TV, Channel *63, Boca Raton, Florida, and applicant for a construction permit for WPPB-DT, Channel *44, Boca Raton, Florida.

[2] Sherjan also filed a "Petition for Leave to File Supplemental Reply Comments" on the same date. In its accompanying petition, Sherjan argued that Marksteiner and PBI had raised certain engineering matters for the first time in their respective Reply Comments, and that Sherjan had not previously had an opportunity to rebut them. Sherjan Petition for Leave, p. 2.

Channel *44 at Boca Raton, Florida.[3] On October 10, 2000, PBI, the former licensee of Station WPPB-TV, Channel *63, Boca Raton, Florida, filed comments in support of the reallotment proposal.[4] On the same date, Sherjan filed comments opposing the proposed reallotment, claiming that the proposed substitution of DTV Channel *40 for DTV Channel *44 at Boca Raton would cause prohibited interference to Class A Station WJAN-CA, Channel 41, Miami, and LPTV Station WFUN-LP, Channel 48, Miami-Ft. Lauderdale.[5] Sherjan argued that, strictly on the basis of contour overlap, the 88 dBu interfering contour of the proposed DTV Channel *40 facility would overlap 64.9% of the area and 80.7% of the population within the protected 74 dBu contour of Station WJAN-CA, and encompass its entire community of license. Sherjan Comments, pp. 2-3. Sherjan also claimed that the proposed substitution of DTV Channel *40 for DTV Channel *44 at Boca Raton would "worsen [the] predicted interference" to Station WFUN-LP, Channel 48, Miami-Ft. Lauderdale, whose certification for Class A status had been accepted by the Commission. *Id.* at 5.

On October 25, 2000, Marksteiner and PBI filed separate Reply Comments[6] which demonstrated that, strictly on the basis of predicted contour overlap, which is what Sherjan had relied exclusively upon in its Comments, the proposed substitution of DTV Channel *40 for DTV Channel

---

[3] All communities referenced herein are located in the state of Florida.

[4] *See* PBI's "Comments in Support of Rulemaking," filed October 10, 2000.

[5] *See* "Comments of Sherjan Broadcasting Co., Inc.," filed October 10, 2000 ("Sherjan Comments"), p. 5. Station WFUN-LP appeared on the Commission's list of LPTV stations which were found eligible for Class A status. *See Public Notice, Certificates of Eligibility for Class A Television Station Status*, 15 FCC Rcd 9480 (Mass Med. Bur. 2000).

[6] Although Marksteiner and PBI filed separate Reply Comments, they contained the same supporting engineering statement which was prepared by Joseph M. Davis, P.E. For purposes of convenience, Marksteiner and PBI will be collectively referred to herein as "the Proponents."

*44 at Boca Raton would not increase the predicted interference to WJAN-CA.[7] The Proponents also demonstrated that, through the use of Longley-Rice terrain dependent propagation methods, as outlined in the Commission's Office of Engineering and Technology Bulletin Number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, July 2, 1997 ("OET Bulletin 69"), the predicted interference to WJAN-CA from the proposed reallotment would affect only 74.6 square kilometers and 552 persons.[8] As demonstrated in the Proponents' Reply Comments, this amounts to only 0.03% of WJAN-CA's service area population (encompassing 1,691,669 persons), which is substantially less than the Commission's 0.5% rounding tolerance. *Id.* and Figure 1A. Therefore, the predicted interference to Station WJAN-CA is substantially less than that suggested by Sherjan, and is well within the Commission's rounding tolerance concerning DTV to Class A interference protection. *Id.* at 3.

In addition, the Proponents demonstrated that the proposed substitution of DTV Channel *40 for DTV Channel *44 at Boca Raton would not result in any increase in predicted interference to Station WFUN-LP on strictly a predicted contour overlap basis. *Id.* at 4. The Proponents' supporting engineering statement contained an interference analysis which was conducted pursuant to OET Bulletin 69 to determine the impact that the proposed Channel *40 allotment at Boca Raton would have on Station WFUN-LP. The results of those studies demonstrated that the proposed DTV Channel *40 facility at Boca Raton would not cause any interference to WFUN-LP, even if

---

[7] *See, e.g.,* Marksteiner Reply Comments, p. 2, citing Engineering Statement, p. 2.

[8] *Id.* at 3, citing Engineering Statement, p. 3.

"masking" interference from other television stations were ignored.[9] Thus, although there is an area of overlap with respect to the predicted service contour of Station WFUN-LP and the interfering contour of the proposed DTV Channel *40 facility at Boca Raton, the Longley-Rice terrain dependent propagation methods contained in OET Bulletin 69 establish that the proposed Channel *40 DTV allotment at Boca Raton would not cause any predicted interference to Station WFUN-LP. *Id.* at 4.

II. Sherjan's Supplemental Reply Comments Fail To Establish That the Proposed Substitution of DTV Channel *40 for DTV Channel *44 at Boca Raton Would Cause Any Increase in Predicted Interference to Class A Stations.

In light of the Proponents' Reply Comments demonstrating that the proposed substitution of DTV Channel *40 for DTV Channel *44 at Boca Raton would not increase the predicted interference to either WJAN-CA or WFUN-LP, Sherjan has now changed course and argues, for the first time, that the Commission should not determine any predicted interference to WJAN-CA on the basis of contour overlap. Instead, Sherjan acknowledges that the Commission should determine the extent of predicted interference to Stations WJAN-CA and WFUN-LP based on a ratio of signal strengths.[10] Despite Sherjan's initial claim that the proposed reallotment would result in interference to 64.9% (701.6 square kilometers) of the land area and 80.7% (1,352,001 persons) of the population within the WJAN-CA 74 dBu protected contour,[11] Sherjan now claims that the proposed substitution of DTV Channel *40 for DTV Channel *44 at Boca Raton would cause interference to 6.9% (74.6 square kilometers) of the land area and 15.2% (254,964 persons) of the population. Supplemental

---

[9] *Id.* at 5, citing Engineering Statement, pp. 3-4.

[10] Supplemental Reply, p. 2.

[11] Sherjan Comments, pp. 2-3.

Reply, p. 2. Thus, after the filing of the Proponents' Reply Comments, Sherjan's claim regarding predicted interference to WJAN-CA has shrank by 58.0% with respect to land area (701.6 sq. km reduced to 74.6 sq. km) and 65.5% in terms of population (1,352,001 people reduced to 254,964 people).

Sherjan also argues that the Proponents erred in relying on an "FLR" computer program because, according to Sherjan, the Commission chose not to adopt that program as a technique for evaluating interference with respect to Class A television stations. *Id.* Specifically, Sherjan claims that the use of the FLR computer program to evaluate the potential for interference to an LPTV or Class A station would "significantly underestimate the extent of any such interference which would actually occur" because (i) the use of directional receive antennas is less common in the case of LPTV and Class A stations, and (ii) LPTV and Class A stations are protected to a much higher signal level.[12] Sherjan also claims that the use of the FLR program requires a waiver of the Commission's rules, which neither PBI nor Broward County has requested. *Id.*

Sherjan's contentions regarding the use of OET Bulletin 69 are not supported by the Commission's *Report and Order* in the Class A rulemaking proceeding.[13] In that *Order*, the Commission found that the Community Broadcasters Association ("CBA") failed to provide any basis for its assertion that LPTV viewers typically use only indoor antennas, rather than an outdoor receive antenna. 15 FCC Rcd at 6386, ¶74, n.136. Accordingly, the FCC expressly rejected the CBA's claim that the use of OET Bulletin 69 methods would result in "severe" interference to Class

---

[12] Supplemental Reply, Engineering Statement, p. 5.

[13] *See Report and Order* in MM Docket No. 00-10, *Establishment of a Class A Television Service*, 15 FCC Rcd 6355 (2000) ("*Class A Report and Order*").

A stations. *Id.* Like the CBA, Sherjan failed to provide any basis for determining the extent to which LPTV or Class A television viewers use only indoor antennas. Sherjan also failed to show how the OET Bulletin 69 techniques may underestimate interference at higher protected signal levels.[14]

Furthermore, although the Commission declined to adopt the routine use of OET Bulletin 69 with respect to determining interference to Class A stations, the Commission elected not to do so only because the use of OET Bulletin 69 would require extensive revisions to the existing computer interference model (FLR) to include the effects of LPTV stations, TV translators, and Class A stations. The Commission stated:

> Several commenters favor basing protection on the provisions in Section 73.622 of the DTV rules and OET Bulletin 69 . . . or, alternatively, allowing use of this methodology where contour protection requirements cannot be met. We agree that use of the methods by which DTV stations protect full-service NTSC stations would permit flexibility and could provide more accurate predictions of interference. However, at this time we will not adopt Class A protection standards centered around these methods. To do so would require extensive revisions to the computer interference model (FLR) used by the Commission and outside engineers to include the effects of LPTV, TV translator, and Class A stations. For now, the contour protection approach is straight forward and can be readily implemented without unduly affecting the preparation and processing of DTV applications. We will, however, permit use of the Longley-Rice terrain dependent propagation model and OET Bulletin 69 to support waivers of the Class A interference protection requirements.

Class A Report and Order, 15 FCC Rcd at 6384-85 ¶71 (emphasis added).

---

[14] As noted in Mr. Davis' attached engineering statement, the use of OET Bulletin 69 to evaluate full-power television stations often involves the interference relationship between first-adjacent stations located within each other's service area, including co-located stations, which often involve high signal levels. Thus, Sherjan's allegation that OET Bulletin 69 techniques are not appropriate for Class A station protection due to high signal levels is inconsistent with established Commission rules and policy. *See* Engineering Statement, p. 4.

As demonstrated above, although the Commission declined to adopt the routine use of OET Bulletin 69 due to the "extensive revisions" that would need to be made to the existing computer interference model (FLR) used by both the Commission and outside engineers, the Commission did not question the accuracy of the OET Bulletin 69 techniques for Class A stations. Indeed, the Commission expressly stated that the use of OET Bulletin 69 would "permit flexibility and could provide more accurate predictions of interference." *Id.*

With respect to Sherjan's argument that the Proponents and Broward County have not requested a waiver of the Commission's rules concerning the use of OET Bulletin 69, the petition for rulemaking seeking to substitute DTV Channel *40 for DTV Channel *44 at Boca Raton was filed on February 8, 2000,[15] which was well before the Commission released the *Class A Report and Order* establishing the new rule provisions and methods of protecting Class A stations.[16] Thus, at the time the rulemaking petition was filed in this proceeding, it could not have been anticipated that a request for waiver of Section 73.623(c)(5) of the rules might be necessary. Nevertheless, to the extent the Commission may determine that a waiver of the Commission's rules regarding contour protection to Class A television stations is necessary, Marksteiner and Broward County respectfully request they be permitted to demonstrate that the proposed reallotment will not cause predicted interference to either WJAN-CA or WFUN-LP pursuant to the techniques contained in OET Bulletin 69. *See Class A Report and Order*, 15 FCC Rcd at 6385 ¶71. Indeed, the substitution of DTV

---

[15] *See* Joint Petition for Rulemaking, filed February 8, 2000 ("Joint Petition"), by Palmetto Broadcasters Associated for Communities, Inc., and PBI.

[16] The *Class A Report and Order* was not issued until nearly two months later, on April 4, 2000.

Channel *40 for the existing DTV Channel *44 allotment at Boca Raton would permit Station WHDT-LP to provide a new digital LPTV service on Channel 44 at Miami-Ft. Lauderdale.[17]

Furthermore, despite Sherjan's objections to the use of the OET Bulletin 69 techniques in determining the predicted interference to Stations WJAN-CA and WFUN-LP, Sherjan made no effort to dispute those results. As demonstrated in the Proponents' Reply Comments, use of the Longley-Rice terrain dependent propagation methods contained in OET Bulletin 69 demonstrated that the predicted interference to Station WJAN-CA is substantially less than that suggested by Sherjan, and is well within the Commission's rounding tolerance concerning DTV to Class A interference protection. As stated above, the Proponents' interference study showed that predicted interference to WJAN-CA from the proposed WPPB-DT operation on Channel *40 would affect only 74.6 square kilometers and a population of only 552 persons. This amounts to 0.03% of WJAN-CA's service area population and is well within the Commission's 0.5% rounding tolerance. *Class A Report and Order*, 15 FCC Rcd at 6386 ¶74.

Finally, the proposed operation of WPPB-DT on Channel *40 at Boca Raton would result in less interference than if the station were to operate with the same technical facilities on Channel *44. As demonstrated in the petitioners' Joint Petition, if the same proposed omnidirectional facility of 1,000 kilowatts were to operate on DTV Channel *44, rather than DTV Channel *40, there would be new interference to 27,256 people (0.7%) within the service area of the construction permit

---

[17] Marksteiner is the licensee of LPTV Station WDHT-LP, Channel 55, Coral Springs. However, the Channel 55 facility has been displaced by a DTV Channel 55 allotment for Station WPTV-DT at West Palm Beach. As a result of the displaced Channel 55 LPTV facility, Marksteiner filed a displacement application and has received a construction permit authorizing Station WHDT-LP to operate inside the core on DTV Channel 44 at Miami-Ft. Lauderdale (File No. BMPTTL-JG0601EX). The commencement of service on DTV Channel 44 at Miami-Ft. Lauderdale would constitute one of the first digital LPTV stations in this country.

facility of Station WHFT(TV), Channel 45, Miami (*see* File No. BPCT-931220KG). Although this level of interference falls within the Commission's 2% *de minimis* limit, it is substantially more interference (27,256 persons v. 552 persons) than would result if the proposed reallotment were to be adopted and Station WPPB-DT were to operate on DTV Channel *40 at Boca Raton. Therefore, for this additional reason, the proposed substitution of DTV Channel *40 for DTV Channel *44 at Boca Raton should be adopted.

III. Conclusion.

As demonstrated herein, the Longley-Rice terrain dependent propagation methods outlined in OET Bulletin 69 establish that the proposed substitution of DTV Channel *40 for the existing DTV Channel *44 allotment at Boca Raton would cause predicted interference to only 0.03% of Station WJAN-CA's service area, which is well within the Commission's 0.5% rounding tolerance. Moreover, the proposed operation of WPPB-DT on Channel *40 at Boca Raton would result in substantially less predicted interference than if the station were to operate with the same technical facilities on Channel *44.

In addition, the OET Bulletin 69 techniques establish that the proposed reallotment would not cause any predicted interference to Station WFUN-LP. Furthermore, the proposed Channel *40 DTV facility at Boca Raton would not receive any predicted interference from WJAN-CA, WFUN-LP, or any other LPTV station eligible for Class A status.

WHEREFORE, in light of the foregoing, the proposal set forth in the *NPRM* to substitute DTV Channel *40 for DTV Channel *44 at Boca Raton, Florida, should be ADOPTED.

Respectfully submitted,

GUENTER MARKSTEINER

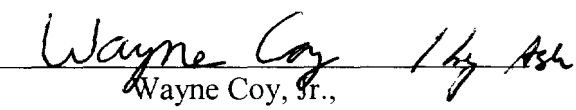
By: 

Frank R. Jazzo
Vincent J Curtis, Jr.
Andrew S. Kersting

His Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North Seventeenth Street,
11th Floor
Arlington, Virginia 22209
(703) 812-0400

SCHOOL BOARD OF BROWARD COUNTY

By: 

Wayne Coy, Jr.,

Its Counsel

Cohn & Marks
1920 N. Street, N.W.
Suite 300
Washington, D.C. 20036-1622
(202) 452-4836

December 21, 2000

c:\ask...jazzo\rm\BocaSupplement.wpd

ENGINEERING STATEMENT
prepared jointly for
School Board of Broward County
and
Guenter Marksteiner
WPPB-DT Boca Raton, Florida
MM Docket 00-138

This engineering statement has been prepared on behalf of the *School Board of Broward County ("Broward")* and *Guenter Marksteiner*, in support of *Supplemental Reply Comments* in a Notice of Proposed Rulemaking, Mass Media Docket 00-138.[1] The subject docket proposes to change the paired digital television (DTV) assignment for WPPB-TV (NTSC Channel 63, Boca Raton, Florida) from DTV Channel 44 to DTV Channel 40, as requested by *Channel 63 of Palm Beach, Inc. ("Channel 63")*. *Broward* has recently assumed control of WPPB-DT from *Channel 63 of Palm Beach.*

In supplemental reply comments filed November 23, 2000 in Docket 00-138, *Sherjan Broadcasting Co., Inc. ("Sherjan")*, licensee of Class A television station WJAN-CA (NTSC Channel 41, Miami, FL), responded to the reply comments filed by *Channel 63* and *Guenter Marksteiner*. *Sherjan's* supplemental reply comments, supported by an engineering statement, stated that any predicted interference to WJAN-CA on the basis of contour overlap was incorrect; that an interference "ratio" should have been applied. *Sherjan's* engineering statement also suggested that the use of OET Bulletin 69[2] in the instant proceeding is not appropriate in order to show protection to WJAN-CA. However, as discussed below, these arguments may be misleading, and concern about interference to WJAN-CA is unwarranted and should not be a factor in the determination of the outcome of Docket 00-138.

Discussion - Contour Overlap

In *Sherjan's* original comments in the instant proceeding, the accompanying engineering statement provided a map and summary of predicted interference to WJAN-CA based solely on contour overlap. The engineering statement concluded that *"the prohibited overlap... would include*

---

[1] See *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Boca Raton, Florida)*, MM Docket No. 00-138, RM 9896, released August 18, 2000.

[2] "OET Bulletin 69," as referenced herein, refers to the Commission's Office of Engineering and Technology Bulletin number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, July 2, 1997.

64.9% (701.6 square kilometers) of the land area and 80.7% (1,352,001 persons) of the population within the WJAN-CA 74 dBμ protected contour." The concept of contour overlap was repeated throughout Sherjan's comments.

In order to provide the Commission's Staff with an "apples to apples" comparison, in the engineering statement prepared by the undersigned for *Channel 63* and *Guenter Marksteiner's* reply comments, the same concept of contour overlap was also applied, since it was the basis of *Sherjan's* original comments claiming a massive interference prediction. Indeed, as *Sherjan's* comments now point out, the Commission's Rules do not employ raw contour overlap to determine interference from DTV stations to analog Class A stations, but rather the ratio of signal strengths is used to determine whether interference would be caused to the Class A station.

Now that *Sherjan* acknowledges (and insists) that the "ratio" method is correct, *Sherjan's* claimed interference to WJAN-CA of 64.9% (701.6 square kilometers) of the land area and 80.7% (1,352,001 persons) of the population in its original comments has shrunk remarkably to 6.9% (74.6 square kilometers) of the land area and 15.2% (254,964 persons) of the population. Thus, one can conclude that *Sherjan's* originally claimed "harm" to WJAN-CA was inflated.

Use of OET Bulletin 69

In *Sherjan's* supplemental reply comments, the accompanying engineering statement suggests that it is inappropriate to use OET Bulletin 69 techniques to determine the expected level of interference within the service area of a Class A station. The statement declares that the Commission declined to adopt the use of OET Bulletin 69 to evaluate interference to Class A stations in part due to the higher protected signal levels provided to those stations and since highly directional receive antennas are less commonly used for reception of a Class A station, and that OET Bulletin 69 techniques may underestimate the extent of any interference.

However, the Commission did not cite either of those reasons in their rationale for not adopting OET Bulletin 69 as its normal evaluation technique. Specifically, the Commission's Order

on Class A Television[3] discussion regarding the use of OET Bulletin 69 techniques rejects just such an argument from a commenter as being unsubstantiated in footnote 136:

> "CBA expressed concern that the current computer implementation of the OET Bulletin 69 methods may not be compatible with the LPTV service contours. This is due to the assumed use in the computer program of outdoor receiving antennas that provide as much as 14 dB of discrimination between desired and undesired signals. CBA suggests that much viewing of LPTV stations is done with indoor antennas and that use of OET Bulletin 69 methods could mistakenly predict service where, in fact, interference would occur. *See* Technical Supplement to Comments of CBA at 2-3. CBA is correct that the current computer implementation of OET Bulletin 69 does assume use of an outdoor receiving antenna, which attenuates the field strength of unwanted signals. However, CBA provides no basis for quantifying the extent to which LPTV viewers use only indoor antennas. Some LPTV station viewers, as well as those of full-service stations, do use outdoor antennas at locations other than the periphery of a station's service contour. We cannot conclude from CBA's comments that use of OET Bulletin 69 methods would result in "severe" interference to the reception of Class A stations."

Sherjan, in its supplemental reply comments, does not provide any basis for quantifying the extent of use of indoor antennas or how the OET Bulletin 69 techniques may underestimate interference at higher protected signal levels. Further, the specific reasoning that the Commission detailed in declining the routine use of OET Bulletin 69 is provided in paragraph 71 of the same Report and Order:

> "Several commenters favor basing protection on the provisions in Sections 73.622 of the DTV rules and OET Bulletin 69 ("OET 69") or, alternatively, allowing use of this methodology where contour protection requirements cannot be met. We agree that use of the methods by which DTV stations protect full-service NTSC stations would permit flexibility and could provide more accurate predictions of interference. However, at this time we will not adopt Class A protection standards centered around these methods. To do so would require extensive revisions to the computer interference model (FLR) used by the Commission and outside engineers to include the effects of LPTV, TV translator, and Class A stations. For now, the contour protection approach is straight forward and can be readily implemented without unduly affecting the preparation and processing of DTV applications. We will, however, permit use of the Longley-Rice terrain dependent propagation model and OET Bulletin 69 to support waivers of the Class A interference protection requirements."

Thus, the Commission did not adopt routine use of OET Bulletin 69 due to its implementation problems at the time in adding LPTV, TV translator, and LPTV facilities for

---

[3]See *Establishment of a Class A Television Service*, MM Docket 00-10, FCC 00-115, released April 4, 2000.

consideration by their computer program. Moreover, the Commission does not question the accuracy of OET Bulletin 69 techniques for such stations, rather, it stated that OET Bulletin 69 techniques could be even more accurate than contour protection (see para 71, above). Finally, *Sherjan's* statement implying that OET Bulletin 69 was not adopted for routine use in part due to receive antenna directivity is incorrect (see footnote 136, above).

It is noted that the use of OET Bulletin 69 for evaluation of full-power stations often involves first-adjacent stations within a subject station's service area (sometimes co-located), which would certainly involve higher signal levels. Thus, *Sherjan's* statement that OET Bulletin 69 techniques are not appropriate for Class A station protection due to high signal levels does not comport with established Commission Rules and policy.

Importantly, *Sherjan* does not dispute or object to the actual OET Bulletin 69 study results for the case at hand provided by the undersigned in the reply comments filed by *Channel 63* and *Guenter Marksteiner.* The interference study showed that interference to WJAN-CA from the proposed WPPB-DT operation would affect only 74.6 square kilometers, involving a population of 552 persons. This is 0.03 percent of WJAN-CA's service area population (1,691,669) and easily meets the Commission's 0.5 percent rounding tolerance for DTV proposals to Class A television stations (per Report and Order on Class A Television at para 74).

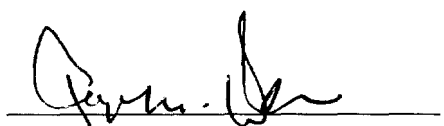
Use of the Longley-Rice terrain dependent propagation methods of OET Bulletin 69 shows that predicted interference to WJAN-CA is substantially less than that suggested by *Sherjan,* and is well within the Commission's tolerance for DTV to Class A interference.

Regarding the need to request a waiver of §73.623(c)(5) of the Commission's Rules regarding contour protection to Class A stations in order to employ OET Bulletin 69 to show protection, it must be noted that the petition to change WPPB's DTV channel assignment was filed with the Commission on February 8, 2000. This was well before the Commission's Report and Order on Class A Television was released (April 4, 2000), which contained the new rule sections detailing the need and methods for protection of Class A stations. Thus, in advance of the release

of the Class A Rules, it could not have been anticipated that a waiver request was necessary. It is also unclear if a waiver request is necessary for using OET Bulletin 69 in association with a channel change proposal. In any event, if a waiver of the Commission's Rules regarding contour protection to Class A Television stations is necessary, then one is respectfully requested on behalf of the petitioner on the basis of the OET Bulletin 69 analysis already summarized.

Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a principal in the firm of *Cavell, Mertz & Davis, Inc.*, is a Registered Professional Engineer in Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical Engineering Technology, and has submitted numerous engineering exhibits to various local governmental authorities and the Federal Communications Commission. His qualifications are a matter of record with that entity.



Joseph M. Davis, P.E.
December 13, 2000

Cavell, Mertz & Davis, Inc.
10300 Eaton Place Suite 200
Fairfax, VA 22030
(703) 591-0110

CERTIFICATE OF SERVICE

I, Chello Johnson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 21st day of December, 2000, copies of the foregoing "Joint Response to Supplemental Reply Comments" were hand delivered or mailed first-class, postage prepaid, to the following:

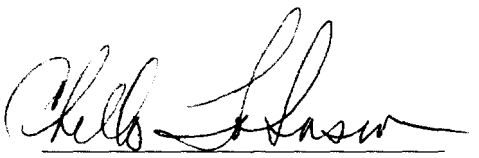
Barbara A. Kreisman, Chief*
Video Services Division
Mass Media Bureau
Federal Communications Commission
The Portals II, Room 2-A666
445 12th Street, S.W.
Washington, DC 20554

Ms. Pam Blumenthal*
Mass Media Bureau
Federal Communications Commission
The Portals II, Room 3-A762
445 12th Street, S.W.
Washington, DC 20554

Peter Tannenwald, Esquire
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W., Suite 200
Washington, DC 20036-3101
(Counsel for Sherjan Broadcasting Co., Inc.)

John R. Feore, Jr., Esquire
Margaret L. Miller, Esquire
Christine J. Newcomb, Esquire
Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, DC 20036-6802
(Counsel for Channel 63 of Palm Beach, Inc.)

Kevin Boyle, Esquire
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004
(Counsel for Palmetto Broadcasters Associated
for Communities, Inc.)



Chello Johnson

* Hand Delivered